Supreme Court, U.S.
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No. 92-2042

In The

Supreme Court of the United States

October Term, 1993

CAROL ROBINSON,

Petitioner,

v.

THE CENTRAL BRASS MANUFACTURING COMPANY and INTERNATIONAL UNION, AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS, LOCAL NO. 1196,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION OF RESPONDENT THE CENTRAL BRASS MANUFACTURING COMPANY

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QUESTION PRESENTED

Should the Court adopt a broad, new rule that would toll the statute of limitations for both component claims of a potential hybrid action, including an employee's §301 claim against her employer, for as long as the employee pursues (whether to exhaustion or not) internal union appeals in which she alleges that her union breached its duty of fair representation in connection with the claim against the employer, even where the intra-union procedure could not by itself achieve reactivation of a grievance or reinstatement of a dismissed employee to her job?

RULE 29.1 STATEMENT

The Central Brass Manufacturing Company has no parent or subsidiary company.

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BRIEF IN OPPOSITION OF RESPONDENT THE CENTRAL BRASS MANUFACTURING COMPANY

The respondent The Central Brass Manufacturing Company ("Central Brass") respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

CORRECTION TO ONE OPINION BELOW

It should be noted that the district court made a significant correction to the memorandum and order granting summary judgment to Central Brass. That Correcting order is set forth in the Appendix to this Brief in Opposition at 31a.

ADDITIONAL STATUTE INVOLVED

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), provides in pertinent part:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

The petitioner Carol Robinson ("Robinson") was employed by Central Brass for approximately three years, until her discharge, due to excessive absenteeism, on October 24, 1989. The employment relationship between Central Brass and Robinson was governed by successive collective bargaining agreements between Central Brass and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW ("the UAW"), and the UAW's Local Union No. 1196 ("Local 1196") (collectively, "the Union"). The most

recent of those agreements was that for the period April 20, 1987, through April 19, 1990 ("the Collective Bargaining Agreement"). The Collective Bargaining Agreement provided a multiple-step grievance procedure ("the Grievance Procedure").[1]

Pursuant to its authority under the Collective Bargaining Agreement, Central Brass in February 1989 implemented a new program to improve employee attendance. Under that program, if an employee has an attendance problem, one or more counseling sessions are held to explain management's expectations with regard to "regular" attendance, and to determine the reasons for absence and what steps could be taken by the employee to correct the situation. At every stage of the counseling, the union is either advised or directly involved. If, after several counseling sessions, an employee continues to have an attendance problem, the employee is given a "decision day" – a day off from work, *with pay* – to decide whether to continue working for Central Brass and satisfy management's expectations regarding attendance.

After a series of counseling sessions, Robinson was given a decision day on August 23, 1989. Following her decision day, Robinson had perfect attendance for 13

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[1] Contrary to the assertion at page 3 of the Petition that the Grievance Procedure "allows employees to file grievances on their own," the Grievance Procedure provides that any grievance which proceeds beyond merely a discussion between an employee and a foreman and is reduced to a writing (which may be "filed") shall be presented to the employee's foreman by the employee's union steward.

days, but then relapsed into her old, unsatisfactory attendance pattern.[2]

A grievance regarding Robinson's discharge ("the Grievance") was filed, processed, and considered pursuant to the Grievance Procedure. Pursuant to Step e of the Grievance Procedure, Central Brass' Management Committee met with six Union representatives – Local 1196's Shop Committee and a representative of the UAW's regional director – on November 1, 1989, regarding the Grievance. At that meeting, the Union representatives advocated Robinson's position and sought her reinstatement. After due consideration, however, Central Brass denied the Grievance and gave written notice of that disposition to the Union on November 2, 1989.

Pursuant to Paragraph f of the Grievance Procedure, the Union could have required that the Grievance be referred to arbitration by making a written request to Central Brass on or before November 16, 1989 (ten working days after the company's written answer in Step e). However, Local 1196 decided that the Grievance lacked merit and should not be advanced to arbitration, and the Union did not make a written request to arbitrate. On November 10, 1989, a member of the Shop Committee informed Central Brass that the Union would not take the Grievance any further.

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[2] Page 2 of the Petition asserts that Robinson "believed . . . that her [attendance] record was at least as good as other, white employees who had not been discharged." However, the record in this case contains no evidence supporting such a belief; in fact, the only evidence comparing Robinson's attendance to that of others is to the contrary.

Paragraph f of the Grievance Procedure provides in pertinent part: "No notice having been given, it shall be considered that neither party desires to proceed further with the grievance." Additionally, Paragraph g of the Grievance Procedure provides in pertinent part: "In the event a grievance is not filed or processed within the time limits set forth in Paragraphs a, b, c, e and f above, it shall be barred from further processing in the grievance and arbitration procedures." Therefore, pursuant to the Collective Bargaining Agreement, the denial of the Grievance – and thus also Robinson's discharge – became final and binding (with very limited possible exceptions[3]) as of, at the very latest, November 17, 1989.

In addition to informing Central Brass of its decision not to seek arbitration of the Grievance, the Union, by letter dated November 9, 1989, informed Robinson of that decision. That letter also provided: "If you are not satisfied with this decision, you may appeal as provided for in Local #1196 By-Laws (Article 16) and the Constitution of the International Union (Article 33). (ARTICLES

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[3] Under the Collective Bargaining Agreement the only means by which a grievance that was not advanced to the next step within the time limits could be reinstated for further processing was provided in Paragraph 14a: "If the Company and the Union mutually agree that an employees' [sic] grievance was improperly withdrawn from the grievance procedure by the Union, or any agency or court determines that an employees' [sic] grievance was improperly withdrawn, the grievance shall be reinstated in the grievance procedure at the step from which it was withdrawn." The term "agency" in this paragraph was consistently interpreted to include governmental agencies but not any bodies or boards of the UAW's internal appeals procedure.

ENCLOSED)". The copy of Article 33 that accompanied the letter provided an internal union appeals procedure by which a member could appeal "any action, decision, or penalty" by a local union. The procedure provided for appeal first to the membership of the body immediately responsible for the action or decision under challenge, second to the International Executive Board, and third, depending upon the nature of the challenge, to either the Convention Appeals Committee or the Public Review Board. Section 5 of Article 33 provided: "It shall be the duty of any individual or body, if aggrieved by any action, decision or penalty imposed, to exhaust fully the individual or body's remedy and all appeals under this Constitution and the rules of this Union before going to a civil court or governmental agency for redress." The copy of Article 16 that accompanied the letter to Robinson provided in its Section 2 that "[a]ny member of the Local Union, after first having exhausted every appeal step within the Local Union, may appeal from any action, decision or penalty to the International Executive Board and to the International Convention," and provided in Section 3: "In no case shall a member appeal to a court or governmental agency for redress until he has exhausted his rights of appeal under the laws of the International Union and the By-Laws of this Local Union. Any violation thereof shall be cause for summary suspension or expulsion by the International Executive Board insofar as imposition of any such penalty is not inconsistent with any applicable laws."

By letter dated December 28, 1989, Robinson appealed to the International Executive Board from Local

1196's decision not to advance the Grievance to arbitration. A hearing on Robinson's intra-union appeal was held on May 15, 1990. The decision of the International Executive Board, denying Robinson's appeal for the reason that Local 1196's "judgment that this grievance could not be won before an arbitrator was sound," was attached to a letter from the president of the UAW to Robinson dated August 30, 1990. Robinson did not appeal to the third level in the internal union appeals procedure.[4]

Instead, Robinson filed a complaint against Central Brass and Local 1196 in the United States District Court for the Northern District of Ohio on November 1, 1990. The complaint alleged a "hybrid" action including both a claim that Central Brass violated the Collective Bargaining Agreement by discharging Robinson (that is, a claimed violation of §301 of the Labor Management Relations Act, 29 U.S.C. §185) and a claim that Local 1196 breached its duty of fair representation, and also alleged other claims that Robinson abandoned during summary-judgment proceedings in the district court. Among the relief sought by Robinson in her §301 claim was reinstatement to her job.

The district court granted motions for summary judgment filed first by Central Brass and then by Local 1196. The reasons for granting both motions with regard to the hybrid action were that the six-month statute of limitations applicable to such actions expired between the time Robinson's claims accrued and the time when she filed

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[4] The statement at page 5 of the Petition suggesting that the district court found "that intra-union remedies were exhausted" is incorrect.

her lawsuit, and that the statute of limitations should not be tolled during the time that Robinson chose to pursue internal union appeals procedures that she need not have exhausted before filing her action in court. The court reasoned that exhaustion was not required because, due to the terms of the Collective Bargaining Agreement, the intra-union appeals procedure could not by itself achieve reactivation of the Grievance or Robinson's reinstatement to her job[5], the latter of which would be necessary to give the complete relief sought by her §301 claim.

After the district court had entered judgment as to all parties and all claims, Robinson appealed to the Court of Appeals for the Sixth Circuit. The decision of the court of appeals was based upon the reasoning that tolling the statute of limitations on a component claim of a potential hybrid action during an employee's pursuit of internal union appeals will advance national labor policies, and will be fair to the potential defendant in that claim, *only* where that procedure can provide some relief to the employee from that defendant. The court pointed out that the UAW's internal appeals procedure could have resulted in some relief from Local 1196 in the form of monetary damages, but that Robinson should have known that under the terms of the Collective Bargaining

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[5] Contrary to the assertion at page 4 of the Petition that the court determined "as a matter of law" that the intra-union appeals procedure could not result in either such reactivation or reinstatement, the court actually made that determination based upon the *facts* that "[t]he procedures were created by the union and were not bargained for by the employer and the union and were not mentioned in the collective bargaining agreement." Appendix to Petition at 24a.

Agreement the intra-union appeals procedure could not have compelled any relief for her from Central Brass.[6] Therefore, the Court of appeals affirmed the summary judgment in favor of Central Brass, but reversed the summary judgment in favor of Local 1196.

REASONS FOR DENYING THE PETITION

Robinson in her Petition proposes that the Court adopt a broad, new rule which also would achieve reversal of the summary judgment in favor of Central Brass. The proposed rule is this: the statute of limitations for both component claims in a hybrid action is always (that is, without exception) tolled by the employees good faith pursuit of an internal union appeal of the conduct that is alleged to have breached the union's duty of fair representation. Applied to the present case, this rule would have the effect of tolling the statute of limitations for Robinson's §301 claim against Central Brass during the time she pursued (although not to exhaustion) her appeal through the UAW's intra-union procedure; such tolling would be permitted even though the Collective Bargaining Agreement did not require reactivation of a grievance found by the intra-union appeals procedure to have been

[6] The court of appeals also noted that Robinson was of the misunderstanding that the intra-union appeals procedure could produce as a remedy her reinstatement, but the court stressed that the misunderstanding was caused solely by the Union. The court did not decide whether causing such misunderstanding was grounds to toll the statute of limitations with regard to Robinson's claim against Local 1196.

improperly withdrawn by Local 1196. The arguments made in support of the rule, however, are without merit, and strong reasons exist why the rule should not be adopted.

The Petition asserts that the decision of the Sixth Circuit in this case conflicts with "this Court's insistence that claims against employers and unions should be subject to the same procedural rules" and with the holdings of other lower courts. However, examination of the cases cited by the Petition that supposedly support these assertions reveals there to be no such insistence – at least with regard to tolling the statute of limitations for an employee's §301 claim against her employer which potentially could be part of a hybrid action – and no decision of any federal court of appeals in a case regarding tolling in a hybrid action that conflicts with the decision below. The Petition also contends that the decision below would eliminate certainty which, Robinson asserts, has been created by prior decisions, and that the Sixth Circuit's ruling threatens to substantially increase the number of hybrid actions filed. Actually, the decisions of federal courts of appeals cited in the Petition which truly address the same issue that was decided below answer it similarly to the way in which the court below did, and the supposed threat is, at best, unsubstantiated. Moreover, the broad, new rule proposed by the Petition would come at much too high a cost because it would upset a balance of national labor policies that has been established by this Court.

The Decisions of This Court Cited in the Petition Do Not Require That the Statute of Limitations for Both Component Claims of a Potential Hybrid Action Must Run or be Tolled at the Same Time

In arguing that the decision below conflicts with an "insistence" by this Court regarding procedural rules for hybrid actions, the Petition overgeneralizes from and overstates the decisions in *Clayton v. UAW*, 451 U.S. 679 (1981), and *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983).

It is indisputable that in *DelCostello*[7] this Court established a six-month statute of limitations for both component claims in a hybrid action, and that the Court stated that "establishing different limitations periods for the two halves of a §301/fair representation suit" would be "unfortunate." *Id.* at 169 n. 19. Of course, the present action does not raise an issue regarding the length of the statute of limitations, but rather concerns the tolling of the statute.

It is also true that in *Clayton* the Court stated that if in a hybrid action a trial court "permitted the action against the employer to proceed, and tolled the running of the statute of limitation in the suit against the union until the internal procedures had been exhausted, it could very well find itself with two separate §301 suits, based on the same facts, proceeding at different paces in its courtroom," and further stated that "this is a result that should be avoided *if possible*." 451 U.S. at 695 (emphasis

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[7] For what it is worth, Central Brass notes that its counsel of record is familiar with *DelCostello*, having appeared before this Court in that case.

added). These statements, however, do not constitute an insistence that where the statute of limitations is tolled for the claim against the union it must also be tolled for the claim against the employer; "if possible" does not mean "always."

Therefore, neither *Clayton* nor *DelCostello* requires tolling of the statute of limitations for the §301 claim in the present case or adoption of the broad rule proposed by the Petition.

No Cited Decision of a United States Court of Appeals Directly Conflicts With the Decision Below

The cases cited by the Petition as being in conflict with the decision of the Sixth Circuit in the present case can be divided into two groups: (1) those not involving hybrid actions, and thus not possibly in conflict with the decision regarding tolling in this hybrid case, and (2) those that actually involved a hybrid action, but do not conflict with the decision below.

Included in the first group is the principal case relied upon by the Petition, *Frandsen v. Brotherhood of Railway, Airline and Steamship Clerks*, 782 F.2d 674 (7th Cir. 1986).[8] *Frandsen* involved only a claim of breach of the duty of fair representation, and apparently the only basis for including the employer as a defendant in that case was the allegation that the employer had conspired with the union to deprive the employee of his seniority and thus

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[8] Again for what it is worth, Central Brass notes that Robinson's counsel of record was counsel for the plaintiff-appellant in *Frandsen*.

shared in the union's liability. *Id.* at 675, 677. Thus, the court in *Frandsen* was not in a position to lay down a tolling rule for hybrid actions, *see Balsavage v. Ryder Truck Rental, Inc.*, 712 F.Supp. 461, 471 (D. N.J. 1989) ("Neither *Frandsen* nor *Lewis* involved a hybrid action . . . "), and in fact it did not. The *Frandsen* decision narrowly states: "We hold that the statute of limitations is tolled against both the union and the railroad while the employee pursues internal union remedies, even if those administrative appeals are futile, *as long as the employee makes a duty of fair representation claim based on a collusion of union and employer.*" 782 F.2d at 686 (emphasis added). This narrow holding does not conflict with the decision of the Sixth Circuit in the present case, nor does it support the broad rule that the Petition proposes be adopted.

Grasty v. Amalgamated Clothing and Textile Workers Union, 828 F.2d 123 (3d Cir. 1987), was not a hybrid case because it did not involve either a claim of breach of duty of fair representation or any claim against an employer. *Id.* at 127 n. 5. Rather, that case involved an action by union members under §301(a) for breach of union constitutions. *Id.* at 127.

Another case from the Third Circuit, *Scott v. Local 863, International Brotherhood of Teamsters*, 725 F.2d 226 (3d Cir. 1984), actually did involve a hybrid action. However, contrary to the assertion at page 10 of the Petition that the court in that case ruled that the timeliness of a hybrid action depends on when an intra-union appeal was concluded, the court in fact stated: "[W]e believe it is inappropriate at this time for us to define the precise criteria by which a district court is to determine when the point of futility is reached in internal union proceedings for

purposes of tolling the statute of limitations." *Id.* at 229 n. 2. Thus, the Third Circuit in *Scott* recognized, as did the Sixth Circuit in the present case, that tolling due to pursuit of intra-union appeals may sometimes be, but is not always, appropriate.

Finally, both *Galindo v. Stoody Co.*, 793 F.2d 1502 (9th Cir. 1986), and *Stafford v. Ford Motor Co.*, 835 F.2d 1227 (8th Cir. 1987), were at one time hybrid actions but did not involve an employer when before the court of appeals. 793 F.2d at 1507 (the claim of breach of the collective bargaining agreement was dropped before trial); 853 F.2d at 1229 n. 3 ("Stafford has since settled his claims against Ford"). Thus, in neither of these cases did the court of appeals have before it the issue of the effect that tolling the statute of limitations during intra-union appeals would have on an employer. Additionally, *Galindo* involved tolling during pursuit of contractual grievance procedures rather than intra-union appeals, 793 F.2d at 1509-1510, and in *Stafford* there were "unique circumstances," and the holding that the employee's claim against the union for breach of its duty of fair representation should be tolled until the exhaustion of the internal union appeals was made in light of the determination that exhaustion of those appeals was necessary to maintain an action in court, 835 F.2d at 1231, 1233.

Therefore, no cited decision of a United States Court of Appeals directly conflicts with the decision below.

The Tolling Rule Proposed By the Petition Would Upset a Balance of National Labor Policies Established by this Court

It is important to note (but the Petition did not acknowledge) that in *Clayton* the Court stated that

"requiring exhaustion [of internal union appeals] with respect to the suit against the employer . . . would violate national labor policy." 451 U.S. at 695. The labor policy referred to, "one of the important federal policies underlying §301," is that favoring relatively rapid disposition of labor disputes. *Id.* at 693. Of course, always requiring exhaustion of intra-union appeals before allowing a §301 action against an employer to proceed would add to the time the employer has the claim hanging over his head. Similarly, tolling the statute of limitations for the claim as long as the employee cares to pursue such appeals also would add to that time and thus would be contrary to this national labor policy. In *Clayton* – where, as here, the internal union procedure could not reactivate the grievance or grant the complete relief (including reinstatement) available in a hybrid action – the Court upheld this policy by permitting the employee to proceed against the employer (and the union) despite the employee's failure to exhaust the internal union procedure. *Id.* at 695. In this situation, exhaustion would not advance the separate national labor policy of encouraging private resolution of contractual labor disputes. *Id.* at 692-693, 696.[9]

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[9] At page 8 the Petition contends that in *Clayton* "this Court held that the federal policy favoring resolution of labor disputes through private rather than judicial means supported a general, but not universal, requirement that employees exhaust intra-union appeals before a hybrid action may be pursued." Actually, the Court's discussion of that policy demonstrates that the holding was narrower:

> In contrast to contractual grievance and arbitration procedures, which are negotiated by the parties to a collective-bargaining agreement and are generally designed to provide an exclusive method for

Moreover, the policy of rapid disposition of labor disputes[10] was a critical consideration in striking the

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> resolving disputes arising under that agreement, internal union appeals procedures are created by the union constitution and are designed to settle disputes between an employee and his union that arise under that constitution. Because of this distinction, the policies . . . encouraging private resolution of grievances arising out of the collective-bargaining process [] are not directly applicable to the issue whether to require exhaustion of internal union procedures.
>
> We conclude that the policies . . . are furthered by an exhaustion requirement *only* where the internal union appeals procedures can either grant the aggrieved employee full relief or reactivate his grievance. For only in those circumstances is there a reasonable possibility that the employee's claim will be privately resolved.

451 U.S. at 695-696 (emphasis added). Furthermore, the characterization of the *Clayton* rule as a "general" requirement of exhaustion overstates the coverage of the rule. In *Clayton* itself, the Court noted that "most collective-bargaining agreements" contain strict time limits for seeking arbitration of grievances, but that only " '*[s]ome* employers and unions have, through collective bargaining, agreed to allow the reinstatement of withdrawn grievances where a union tribunal reverses the union's initial decision.' " *Id.* at 692 n. 18 (emphasis added). Thus, exhaustion is required only in those "some" cases where such a provision is contained in the collective bargaining agreement (or in a very unlikely case where the intra-union appeals procedure could itself compel reinstatement of a discharged employee to her job).

[10] Where only a union member/employee and her union are parties to a dispute, tolling the statute of limitations during internal appeals (whether required or merely permitted by the union) would not involve this policy, nor could it be said by the union to be unfair.

balance underlying the statute of limitations established in *DelCostello*. 462 U.S. at 168; *see also Frandsen*, 782 F.2d at 678 ("The purpose behind the six-month statute of limitations is a rapid resolution of labor disputes."). And yet, in *DelCostello*, the Court actually *lengthened* the statute of limitations on §301 claims against employers "to provide an aggrieved employee with a satisfactory opportunity to vindicate his rights." 462 U.S. at 166. Certainly, then, additional lengthening is undesirable.

As this Court noted in *Clayton*, intra-union appeals are "potentially lengthy." 451 U.S. at 689. The Petition at page 8 states that such procedures "almost always take longer than the six-month limitations period." An example is provided by the present case, in which Robinson's intra-union appeals lasted nine months (December 1989 through August 1990), even though she did not pursue the third level. Thus, under the rule proposed by the Petition, the time from when a hybrid claim accrues until an action would have to be filed in court would routinely be more than doubled. Such a result would upset the balance struck in *DelCostello*,[11] and therefore the Petition seeking the adoption of the rule should be denied.

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[11] Also, permitting pursuit of intra-union appeals to toll the statute of limitations for a hybrid action might also substantially add to the time for which an employer is potentially liable for a discharged employee's backpay. Although Paragraph 14a of the Collective Bargaining Agreement provided in part that "[i]f a reinstated grievance is arbitrated and decided in the employees' [sic] favor, the Company shall not be required to pay any backpay for the period between the withdrawal and the reinstatement of the grievance," such a provision might not appear in other collective bargaining agreements.

The Petition's Other Arguments are Without Merit

The Petition at page 11 also argues that, under the decision below, employees with claims that could be filed as hybrid actions will either pursue intra-union remedies and later find out that such pursuit did not toll the statute of limitations or, "more likely," will bring precautionary hybrid actions soon after they accrue, without exhausting intra-union appeals, which supposedly would substantially increase the number of such actions filed.

The Court's statement in *Clayton*, that it was "clear" that under the collective bargaining agreement the union could neither reinstate Clayton in his job nor reactivate his grievance, 451 U.S. at 691, indicates that employees can understand what the first of these arguments doubts they can. Indeed, it would hardly seem any more difficult for an employee to determine whether intra-union appeals can reactivate a grievance or reinstate an employee than it is for the employee to determine that a hybrid action may be filed at all. Moreover, the Sixth Circuit in the decision below specifically addressed this issue and stated that where it is "difficult for an employee, even after the exercise of due diligence, to determine that the internal union remedies are completely futile . . . this difficulty must be considered by the court" in deciding whether to toll the statute of limitations. Appendix to Petition at 14a.

Finally, the argument that the decision below would lead to extra, precautionary lawsuits seems to assume that intra-union appeals regularly give enough satisfaction to employees that they do not file §301 claims against their employers, and that, in the past, employees have

waited to file such lawsuits until after exhausting intra-union appeals. The former of these assumptions is doubtful, *see Clayton*, 451 U.S. at 689 (exhausting internal union appeals "*might* lead to nonjudicial resolution of *some* contractual grievances") (emphasis added), and the present case itself is evidence to the contrary on the latter assumption: Robinson filed her hybrid action without exhausting the UAW's internal appeals procedure.

Therefore, these arguments are also without merit.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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July 22, 1993

APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CAROL ROBINSON Plaintiff vs. THE CENTRAL BRASS MANUFACTURING COMPANY, et al. Defendants	CASE NO. 1:90CV1949 HON. GEORGE W. WHITE ORDER (Filed Apr. 17, 1991)

The sentence "The Court noted that common sense suggests that the limitations period should be tolled when a plaintiff can decide whether to exercise optional union remedies" found in the last paragraph on page five of the Court's memorandum and order of April 11, 1991 is **vacated** and replaced by the following sentence. "The Court noted that common sense suggests that the limitations period should *not* be tolled when a plaintiff can decide whether to exercise optional union remedies. Nunc Pro Tunc.

IT IS SO ORDERED.

/s/ George W. White
George W. White 4-17-91
UNITED STATES
DISTRICT JUDGE